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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 Georgia Mendoza,

4 Plaintiff,

5 v.

15 Cv. 4619 (RJS)

6 Wax Up NY, Inc. (d/b/a Uni K
7 Wax) et al.,

8 Defendants.

9 New York, N.Y.
10 November 12, 2015
4:37 p.m.

11 Before:

12 HON. ANDREW J. PECK,

13 Magistrate Judge

14 APPEARANCES

15 KATONA & MIR, LLP
16 Attorneys for Plaintiffs
SAMIYA N. MIR

17 MELTZER, LIPPE, GOLDSTEIN & BREITSTONE, LLP
18 Attorneys for Defendants
JEFFREY DOUGLAS
19 LARRY R. MARTINEZ
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1 THE COURT: We are on the record in the case of
2 Gregoria Mendoza and Doricel Reyes against Wax Up NY,
3 Incorporated, Pascal Benoudiz, and Moises Briceno, 15 Civ.
4 4619, to record the conditional settlement agreement that the
5 parties have reached subject to the Court's -- that is Judge
6 Sullivan's -- approval, because this is a case involving claims
7 under the FLSA, and under the Cheeks against Pancake House
8 Second Circuit recent decision requires judicial approval.

9 I will state the basic terms as I understand them, and
10 ask counsel and their clients to pay careful attention, stop me
11 if anything needs to be clarified, and at the end I'll be
12 asking counsel and clients to confirm the agreement.

13 Now I will stop to let Mr. Martinez translate for
14 Mr. Benoudiz what I've just said.

15 Defendants have agreed to amicably resolve this
16 dispute without any admission of fault or liability on the
17 following terms:

18 Defendants will pay the sum of \$71,000 to plaintiffs
19 and their counsel, and the payment will be made in installments
20 as follows:

21 \$50,000 will be paid 30 days after Judge Sullivan's
22 approval of the settlement agreement, but in any event, no
23 sooner than January 5, 2016, should settlement occur prior to
24 approximately December 5.

25 The remaining 21,000 will be paid in three monthly

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1 installments of \$7,000 each, with the first installment being
2 paid 30 days after the \$50,000 upfront payment, and the second
3 and third of those payments 60 and 90 days after the \$50,000
4 upfront payment.

5 By way of example, and not in any way otherwise
6 binding, if the \$50,000 payment is made on January 5, 2016,
7 then the first \$7,000 monthly installment would be due on
8 February 5, 2016.

9 In the event the due date for any monthly installment
10 falls on a weekend or holiday, payment would be due the
11 immediately following Monday.

12 The settlement, as I've already said, because it's an
13 FLSA settlement, is subject to Judge Sullivan's approval, and
14 if not approved by him, then nothing in this settlement
15 agreement can be used in any way in the litigation.

16 Plaintiff's counsel shall prepare an allocation
17 statement and present it to defense counsel showing the
18 allocation of the \$71,000 between and among each of
19 Ms. Mendoza, Ms. Reyes, and attorneys' fees, and further
20 allocating how much is for FLSA wages and how much is for FLSA
21 or New York labor law liquidated damages and/or payment for the
22 discrimination claims in the lawsuit.

23 Amounts for wages, whether under the FLSA, the
24 New York labor law, or any of the discrimination claims, shall
25 be taxable to the plaintiffs. A W-2 for each plaintiff will be

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1 prepared, and the appropriate withholding -- FICA, social
2 security, et cetera, et cetera -- will be withheld from the
3 payments and remitted to the IRS or state taxing authorities.

4 Amounts for legal fees will generate a 1099 to the
5 Katona & Mir, LLP firm. Amounts, if any, for FLSA or New York
6 labor law liquidated damages will generate no withholding but a
7 1099 to Ms. Mendoza and/or Ms. Reyes. Obviously, the
8 plaintiffs will be responsible for paying their own taxes.

9 In addition to the allocation that Ms. Mir will
10 prepare, it will be her responsibility to present this
11 transcript, as well as the allocation agreement, or a more
12 formal settlement agreement, if the parties choose to draft it
13 as such, along with an explanation and motion to Judge Sullivan
14 to approve the settlement under the Cheeks approach.

15 Obviously, the sooner that is submitted to Judge
16 Sullivan, the sooner it will trigger payments, or at least will
17 get it on Judge Sullivan's desk to trigger his approval, which
18 will then trigger payment obligations, so I'm not going to set
19 a specific deadline, but obviously, it's in the plaintiff's
20 interest to get that to Judge Sullivan as soon as possible.

21 (Discussion off the record)

22 THE COURT: When we were off the record, counsel
23 informed the Court that they would like a formal settlement
24 agreement. Defense counsel stated they will take a first stab
25 at it and agreed they will present that to plaintiff's counsel

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1 for review and approval within one week from tomorrow, not one
2 week from today.

3 (Discussion off the record)

4 THE COURT: In discussions off the record, the only
5 two additional terms that will be in the formal settlement
6 papers is a simple agreement with no penalty clause or anything
7 else on mutual nondisparagement, meaning neither side is
8 permitted to say anything negative about the other on a
9 going-forward basis, and mutual general Blumberg releases with
10 the thought being that, while there is some question under the
11 FLSA as to overbroad releases, in this case, there are
12 non-FLSA, discrimination, and other claims that dismissal would
13 generally take care of it, but in an overabundance of caution,
14 and as long as there is the quid pro quo of the release being
15 mutual so the plaintiffs are getting released by the
16 defendants, as well, presumptively Judge Sullivan would be able
17 to approve that. Obviously, if he doesn't, you will need to
18 think on both sides as to whether that is really necessary
19 other than the dismissal.

20 Those are the only other terms other than what I've
21 already described that should be in the formal documentation.

22 Obviously, the parties are free to agree jointly on
23 other things, but if push comes to shove and you're coming back
24 to the Court, I'm going to limit the settlement agreement to
25 what has been stated on the record here today, so that's why

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1 I'm going on the record.

2 (Discussion off the record)

3 THE COURT: The parties further agree that, in the
4 event any of the installment payments, including the first
5 \$50,000 payment, is not made when due, then plaintiffs' counsel
6 shall give notice to Mr. Douglas and Mr. Martinez on behalf of
7 defendants, and defendants will have five business days'
8 opportunity to cure any such default.

9 If they cure the default, then the payment plan goes
10 on as scheduled. If they do not, then plaintiffs can come to
11 the Court, and can come to me if the settlement agreement so
12 states, and the Court will retain jurisdiction for that
13 purpose, whether it's in front of me or Judge Sullivan, and get
14 judgment entered for the entire balance.

15 In other words, if the \$50,000 upfront payment is
16 made, and this is just an example, and the first of the three
17 \$7,000 installments is not made and not made after being given
18 five days to cure, then the entire \$21,000 balance is due, and
19 judgment can be entered accordingly, including the provision
20 for attorneys' fees in connection with the collection efforts.

21 Finally, and I may have said this already, but in case
22 I didn't, the settlement agreement will provide that, upon
23 Judge Sullivan's approval, the case is dismissed with prejudice
24 and without cost beyond the \$71,000 settlement amount.

25 Ms. Mir, as counsel of record for the plaintiffs and

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1 subject to their assent that I will ask for next, do you agree
2 to the terms of settlement?

3 MS. MIR: Yes, your Honor.

4 THE COURT: Ms. Mendoza, please stand. Having gotten
5 the advice of your attorney, Ms. Mir, do you agree to the terms
6 of the settlement?

7 MS. MENDOZA: Yes.

8 THE COURT: Do you understand, though, we haven't
9 worked out the numbers that the 71,000 in some fashion will be
10 divided among you, Ms. Reyes, and your attorneys, and there
11 will not be any additional attorneys' fees paid by the
12 defendants?

13 MS. MENDOZA: Yes.

14 THE COURT: Thank you.

15 Ms. Reyes, please stand. Same question as I asked
16 Ms. Mendoza. Having gotten the advice of your attorney, and
17 knowing that there will be some allocation between you,
18 Ms. Mendoza, and counsel, and indeed that it appears your share
19 is much smaller than Ms. Mendoza, do you agree to the terms of
20 the settlement?

21 MS. REYES: Yes.

22 THE COURT: Thank you.

23 Mr. Douglas, as counsel of record, along with
24 Mr. Martinez, for all three defendants, and subject to
25 Mr. Benoudiz's assent that I'll ask for next, do you agree to

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1 the terms of settlement?

2 MR. DOUGLAS: Yes, your Honor.

3 MR. MARTINEZ: Yes, your Honor.

4 THE COURT: Mr. Benoudiz, having gotten the agreement
5 translated for you by Mr. Martinez, do you understand all the
6 terms of the settlement?

7 MR. BENOUDIZ: Yes, yes.

8 THE COURT: On behalf of yourself and the other
9 defendants, are you authorized to and do you agree to the terms
10 of the settlement?

11 MR. BENOUDIZ: Yes.

12 THE COURT: Both sides having agreed, you have a
13 conditionally binding settlement agreement subject to Judge
14 Sullivan's approval.

15 I direct both sides to obtain the transcript from the
16 court reporter which results in a 50/50 splitting of the costs,
17 not a doubling of the costs.

18 With that, I wish all the parties good luck. I thank
19 you for your efforts today, which took longer than I might have
20 anticipated, but has resulted in a settlement.

21 With that, we are adjourned and dismissed.

22 MS. MIR: Thank you, your Honor.

23 MR. DOUGLAS: Thank you, your Honor.

24 (Adjourned)

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